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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,539	04/09/2004	Joseph B. Hippensteel	047732/277336	1290

826 7590 11/01/2005

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EXAMINER
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NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/821,539		HIPPENSTEEL, JOSEPH B.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Tam Nguyen		3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4, 5, 7-12, 14-19 is/are rejected.
- 7) ☒ Claim(s) 6 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 recites the limitation "said frame width" and "the circle of rotation" in lines 2 and 5 respectively. There is insufficient antecedent basis for these limitations in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Chang (6,001,046).

2. As to claims 1 and 5, it remains rejected according to the reasons provided in paragraph 11 of the last office action dated March 2, 2005.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (6,001,046) in view of Tornabene (6,394,938).

3. As to claims 2, 15 and 16, Chang disclose an exercise device as described above (see discussion of claim 1). Chang does not disclose a headrest mounted to a bench by a spring mechanism. Tornabene discloses an exercise device comprising an exercise bench (12) that includes a headrest (42) mounted thereon by a spring mechanism (43,44,46,48) that runs in a direction along the length of the bench and positioned between the bench and the headrest to allow a range of motion for the user's head and neck (see Fig. 1 & Col. 3, lines 17-27). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Chang's bench with Tornabene's headrest to provide users' of various heights with an adjustable means to support their head during exercise.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (6,001,046) in view of Kennedy (4,830,363) and Taggett (6,533,708).

4. As to claim 4, Chang disclose an exercise device as described above (see discussion of claim 1). Chang does not disclose that the arm mechanisms are laterally adjustable from the frame and vertically adjustable from the frame such that the axis of rotation is capable of being moved in a vertical direction to adjust the rotation of the arm mechanism. Kennedy discloses an exercise device that includes an arm mechanism (26) that is laterally and vertically adjustable relative to the frame (see Figs. 1 & 3).

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Taggett discloses an exercise device that includes arm mechanisms (54,64,72,74) that are vertically adjustable relative to a frame (see Fig. 2). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the teachings of Kennedy and Taggett to modify Chang's arm mechanisms such that the arm mechanism is laterally and vertically adjustable so that users of various sizes can comfortably exercise different muscles depending on the positioning of the arm mechanism relative to the frame. Furthermore, adjustability, where desirable, is a modification within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (6,001,046) in view of Marshall (4,768,775).

5. As to claim 7, Chang discloses an exercise device as described above (see discussion of claim 1). Chang does not disclose that the arm mechanism is pivotable vertically to rotate the axis of rotation. Marshall discloses a similar exercise device comprising an arm mechanism (32) that is pivotable vertically to rotate the axis of rotation (see Figs. 2 & 3). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Chang's arm mechanism such that they could be pivotable vertically to rotate the axis of rotation to provide the user with additional exercise motions for a more complete workout.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (6,001,046) in view of Lautenschlager (4,738,445).

6. As to claim 8, Chang discloses an exercise device as described above (see discussion of claim 1). Chang does not disclose that the leg mechanism is vertically adjustable to adjust the circle of rotation of the pedals. Lautenschlager discloses a similar exercise device comprising vertically adjustable leg pedals (see Figs. 1 & 4). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Chang's leg mechanism such that they could be vertically adjustable so that user's of various heights can comfortably exercise various leg muscles.

7. As to claim 9, Chang and Lautenschlager disclose a modified exercise device as described above (see discussion of claim 8). Chang does not disclose that the pedals are adjustable such that the radius of rotation of the pedals is adjustable. The Examiner takes Official Notice that the prior art includes exercise devices having pedals and cranks wherein the cranks are length adjustable to vary the radius of rotation of the pedals. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Chang's leg mechanism such that the radius of rotation of the pedals are adjustable for improved user comfort or to provide a variety of exercises which depend on the radius of rotation.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (6,001,046) in view of Taggett (6,533,708) and Lautenschlager (4,738,445).

8. As to claim 10, Chang, Taggett and Lautenschlager disclose a modified exercise device as substantially claimed (see discussion of claims 1, 4, and 8).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (6,001,046) in view of Taggett, Lautenschlager and Tournabene.

9. As to claim 11, Chang, Taggett, Lautenschlager and Tournabene disclose a modified exercise device as substantially claimed (see discussion of claims 1, 2, 4 & 8).

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang in view of Kenney, Taggett and Lautenschlager.

10. As to claim 12, Chang, Kennedy, Taggett and Lautenschlager disclose a modified exercise device as substantially claimed (see discussion of claims 1, 4, and 8).

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (6,001,046) in view of Taggett, Lautenschlager and Marshall.

11. As to claim 14, Chang, Taggett, Lautenschlager and Marshall disclose a modified exercise device as substantially claimed (see discussion of claims 1, 4, 7 and 8).

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liao (6,168,557).

12. As to claims 17 and 19, Lai discloses an exercise machine having a bench (24,36) formed in two sections that are adjustable longitudinally, a shock-absorbing crosspiece (41) mounted to the frame between the two sections defining a fulcrum and a shock-absorber like device mounted to the frame to provide spring support wherein the absorber-like device includes a shock absorber/pad (16) (see Figs. 1 & 3). Lai does not disclose that the frame (10) is longitudinally adjustable. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make the frame longitudinally adjustable such that the overall stability of the machine can be increased when the frame is lengthened.

13. As to claim 18, Liao discloses an exercise machine as described above (see discussion of Fig. 17). Liao does not disclose that the shock-absorber like device includes a spring. The examiner takes Official Notice that the prior art includes shock-absorber like devices that comprise a plurality of materials including pads and springs that provide a cushioning effect. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Liao's pad with any of an array of cushioning means including a spring since the pad and spring are functionally equivalent in providing a cushioning means to the bench; thus they are interchangeable.

***Allowable Subject Matter***

14. Claims 6 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

15. Applicant's arguments filed July 19, 2005 regarding claims 1 and 5 have been fully considered but they are not persuasive.

Regarding claim 1, Chang discloses a bench "for a user to lie on their back". The bench provides a seat (42) and back support (44) for the user to lie recumbently thereon (see Fig. 1). According to Merriam Webster's Collegiate Dictionary, 10<sup>th</sup> Edition, the word lie, from the verb lay, refers to being put or set down. In this case, the claim language can be interpreted as a user setting himself down on a bench such that his buttocks lie on the seat portion of the bench and his back lies on the back support portion of the bench.



Chang also discloses "rotatable arms to be rotated around an axis of rotation". Applicant argues that Chang's poles do not move in a circular motion, yet applicant only claims arms to be rotated around an axis of rotation. There is no further claim language stating that the arm motion must be circular around the axis or that the arms rotate completely around the axis. Absent this language, Chang clearly reads on the claim language of "arms to be rotated around an axis." Note, Olschansky et al. '479 disclose a similar exercise device having arms that rotate in circle completely around an axis.

16. Applicant's arguments with respect to claims 3, 7, 14, 10-19 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sweeney, III '272 discloses an exercise device that includes an arm mechanism that includes pedals and adjustable cranks for changing the radius of rotation of the pedals (see Fig. 2).

Johnson '402 discloses an exercise device that includes a vertically adjustable arm mechanism that can change the axis of rotation of the handles (see Figs. 1-4).

Shifferaw discloses a bench having a fulcrum and spring disposed at the fulcrum (see Fig. 10).

Hopkins' 634 discloses an exercise device having an arm mechanism that is pivot vertically to change the axis of rotation of the mechanism (see Fig. 2).

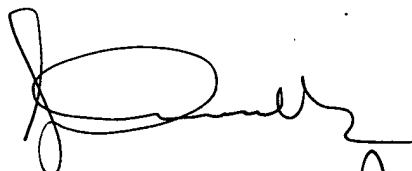
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 26, 2005

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Primary Examiner